IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kamal Garg. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 505/2005
against the order dated 19-4-2005 passed
by the Addl. Sessions Judge No.2, Udaipur,
in Criminal Case No.13/2005.

...

Date of Order: September 13, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Dr. Sachin Acharya, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner-complainant has challenged the order dated 19-4-2005 passed by the Additional Sessions Judge No.2, Udaipur (for short, "the Appellate Court" hereinafter) in Criminal Case No. 13/2005, whereby during pendency of the appeal against the judgment of conviction and sentence, the complainant-petitioner filed an application under Section 454 of the Code seeking custody of the currency notes of Rs.3,14,000/-. The Appellate Court, while allowing the application, directed to release the currency notes for the said

sum provided that the appellant furnishes a bank guarantee with a condition that he will produce the same currency notes before the Court as and when called upon to do so. Aggrieved by the conditions imposed by the Appellate Court, including direction to furnish the bank guarantee and production of the same currency notes, the petitioner has filed the instant criminal miscellaneous petition.

I have heard learned counsel for the petitioner and the Public Prosecutor.

It is contended by the learned counsel for the petitioner that the currency notes had been produced in the Court in evidence and the same have been exhibited and proved and thereafter the accused facing the trial, as many as four persons have been convicted and sentenced, against which an appeal is pending. Learned counsel for the petitioner submits that the conditions of furnishing the bank guarantee and production of the same currency notes is onerous; these conditions virtually deprived the petitioner-complainant to use the money for an indefinite period and, therefore, the conditions of furnishing the bank guarantee and same currency notes may be modified to solvent security and production of the said amount.

Having regard to the facts and circumstances of the case, in my view, the aforesaid conditions imposed by the

Appellate Court while releasing the currency notes appears to be onerous and, therefore, deserve to be modified.

In the result, the impugned order dated 19-4-2005 passed by the Appellate Court is modified to the extent that the sum of Rs. 3,14,000/- be released to the petitioner-complainant, instead of furnishing the bank guarantee, on furnishing the personal bond a solvent security for the said amount with a direction to produce the said amount as and when called upon to do so. The criminal miscellaneous petition is accordingly disposed of.

(H.R. PANWAR), J.

mcs